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MISCELLANEOUS AND TECHNICAL SOCIAL SECURITY ACT AMENDMENTS OF 1989

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 3730 which on November 19, 1989, was referred jointly to the Committee on Ways and Means and the Committee on Energy and Commerce]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3730) to amend titles II, IV, XVI, XVIII, and XIX of the Social Security Act and the Internal Revenue Code of 1986 to extend certain expiring provisions, to make miscellaneous improvements in the old-age, survivors, and disability insurance program, the supplemental security income program, the program of aid to families with dependent children, the railroad retirement program, the medicare program, and the medicaid program, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. INTRODUCTION

A. PURPOSE AND SCOPE OF THE LEGISLATION

The provisions in the bill amend the Social Security Act and are designed to improve the effectiveness of the Social Security, Medicare, SSI, Child Welfare, Foster Care, and AFDC programs.

B. BACKGROUND AND NEED FOR LEGISLATION

Social Security Provisions

On September 28, 1988 the Subcommittee on Social Security held a hearing to examine the quality of services provided by the Social Security Administration. The Subcommittee learned about the recent difficulties that the SSA has encountered in accurately crediting earnings to workers' social security accounts, in redesigning

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its telephone system and establishing a national 800 number, and in modernizing its computer software and hardware.

At a hearing held on April 6, 1989, the Subcommittee learned about the difficulties that disabled beneficiaries face in seeking to adopt children due to restrictions in the Social Security Act on the eligilibity of such children for dependents' benefits.

Human Resource and Income Security Provisions

During its June 1, 1989 hearing on the child welfare, foster care and adoption assistance programs, the Committee learned that due to significant increases in reported cases of abuse and neglect, and the changing characteristics of children and youths entering the child welfare system, States have increasingly focused on emergency protective services for children, in lieu of preventive services. The increase in the child welfare authorization, and extension of authority to transfer foster care funds to child welfare services, are designed to address this concern.

At the June 1, 1989 hearing the Committee also learned that the HHS process for reviewing State compliance with certain requirements for foster care protections has been implemented in a sometimes unfair and untimely manner. Thus, this legislation would grant States a one-year reprieve from the collection of penalties associated with the strictest review while the Committee develops a legislative proposal to amend the HHS review process.

Other human resource provisions would correct technical errors in the Family Support Act, authorize a demonstration which tests a potentially cost-effective way to provide medical and other support to disabled children at home, and disregard Agent Orange settlement payments from income and resources under several means-tested programs.

Medicare Provisions

During the Spring of this year, the Subcommittee on Health held a variety of hearings on the Medicare program and its operations. These hearings identified a number of minor and technical issues. In some cases, the Subcommittee learned of potential solutions that require some minor adjustments for the program to achieve its objectives. In other cases, the issues identified the need for additional information, or studies, that would assist the Committee in its deliberations in the future.

C. Summary of Principal Provisions

The principal social security provisions in the bill deal with adopted children, with the quality of services provided by the Social Security Administration, and with the payment of disability benefits during appeal. With respect to adoption, the bill liberalizes the conditions under which a child adopted by a social security beneficiary can qualify for dependents' benefits.

The provisions dealing with SAA services include an expansion of the agency's authority to correct erroneous earnings records, require that workers receive periodic statements of their cumulative social security taxes and expected benefits, and require same-day

interviews for individuals who visit SAA offices on time-sensitive business.

With respect to disability, the bill provides a one-year extension of the current law option for a disabled beneficiary to continue to receive benefits while pursuing an administrative appeal.

The human resource provisions in the bill make modest improvements to title IV-B of the Social Security Act, the Child Welfare Services program, and extend an expiring provision of that law. The bill also includes a temporary prohibition on collection of certain penalties levied against States under Title IV-B. A provision exempting Agent Orange settlement payments from income and resources under a variety of needs-based public assistance programs is also included and a disabled children's demonstration project is authorized.

The bill also includes a number of miscellaneous and technical health provisions.

II. DETAILED EXPLANATION OF THE COMMITTEE BILL

SOCIAL SECURITY PROVISIONS

Time-Sensitive Provisions

1. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL

Present Law

A DI beneficiary who is determined to be no longer disabled may appeal the determination sequentially through three appellate levels within SSA: (1) a reconsideration, usually conducted by the State disability determination service that rendered the initial unfavorable determination; (2) a hearing before a SSA administrative law judge (ALJ); and (3) a review by a member of SSA's Appeals Council.

The beneficiary who has the option of having his or her benefits continued on an interim basis through the hearing stage of appeal. If the earlier unfavorable determinations are upheld by the ALJ, the benefits are subject to recovery by the agency. (If an appeal is made in good faith, recovery may be waived.) Medicare eligibility is also continued, but medicare benefits are not subject to recovery.

Public Law 98-460 provided interim benefits through the hearing stage on a temporary basis. This provision was subsequently extended, most recently by the Technical and Miscellaneous Revenue Act of 1988 (which applies to appeals of termination decisions made on or before December 31, 1989). Under this latest extension, payments may continue through June 30, 1990 (i.e., through the July 1990 check).

Proposal

The current provision permitting the payment of benefits upon appeal through the hearing stage would be extended for one year.

Effective date.—Applies to unfavorable decisions made on or after January 1, 1990.

NOTE.—The House proposed to make this provision permanent in the reconciliation bill, H.R. 3299; the Senate Finance Committee extended it for one year in its reconciliation provisions.

2. GENERAL FUND TRANSFERS TO RAILROAD RETIREMENT TIER II TRUST FUND

Present Law

Proceeds from the income taxation of railroad retirement Tier II benefits received prior to October 1, 1989 are transferred from the general fund of the U.S. Treasury into the Railroad Retirement Account. Proceeds from the taxation of benefits received after this date will remain in the general fund.

Proposal

The provision would extend the transfer of proceeds from the taxation of railroad retirement Tier II benefits from the general fund into the Railroad Retirement Account for one year, to apply to benefits received prior to October 1, 1990.

Effective date.—The provision would be effective upon enactment.

NOTE.—The House-passed budget reconciliation bill, H.R. 3299, extended this provision for one year; the Senate Finance Committee extended the provision for two years.

3. EXTENSION OF DISABILITY INSURANCE PROGRAM DEMONSTRATION PROJECT AUTHORITY

Present Law

Section 505(a) of the Social Security Disability Amendments of 1980 (P.L. 96-265), as extended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), authorizes the Secretary to waive compliance with the benefit requirements of titles II and XVIII for the purpose of conducting work incentive demonstration projects to encourage beneficiaries to return to work. This authority will expire June 10, 1990.

Proposal

The work incentive demonstration project authority would be extended for three years, through June 10, 1993.

Effective date.—The provision would be effective upon enactment.

NOTE.—The proposal was approved in the Senate Finance Committee reconciliation provisions.

TECHNICAL PROVISIONS

1. PROHIBITION AGAINST TERMINATION OF COVERAGE OF U.S. CITIZENS AND RESIDENTS EMPLOYED ABROAD BY A FOREIGN AFFILIATE OF AN AMERICAN EMPLOYER

Present Law

U.S. citizens and residents employed abroad by a foreign affiliate of an American employer are covered by social security at the option of the employer through an agreement between the employer and the Secretary of the Treasury. The employer can terminate this coverage by giving 2 years advance notice after the agreement has been in effect for at least 8 years.

Proposal

American employers' option to terminate social security coverage of workers in their foreign affiliates would be eliminated.

Effective date.—Applies with respect to any coverage agreement in effect on or after June 15, 1989, for which there is no notice of termination in effect on this date.

NOTE.—This provision was included in the House-passed budget reconciliation bill, H.R. 3299.

2. TREATMENT OF REFUNDS BY EMPLOYERS UNDER THE MEDICARE CATASTROPHIC COVERAGE ACT OF 1988 FOR FICA AND SOCIAL SECURITY BENEFIT PURPOSES AND FOR OTHER PURPOSES

Present Law

The Medicare Catastrophic Coverage Act of 1988 includes a maintenance-of-effort provision which requires that employers who offer health insurance benefits which overlap the new medicare benefits must provide either additional benefits or a refund to individuals covered by the employer's plan during the first two years the Act is in effect.

Proposal

Refunds to individuals by employers under the maintenance-of-effort provisions of the Medicare Catastrophic Coverage Act of 1988 would be excluded from wages for FICA and FUTA tax purposes and from compensation for railroad retirement and railroad unemployment insurance tax purposes. By excluding these amounts, the Committee intends that such amounts would not be taken into account in calculating average wages for purposes of determining the social security contribution and benefit base, the railroad retirement contribution and benefit base, and other social security and railroad retirement amounts, and for purposes of the federal-state unemployment insurance system and the railroad unemployment insurance program. The Secretary of the Treasury would be given authority to prescribe the manner in which such amounts would be reported. Without this provision, the estimated 3 million W–2 wage statements showing on average $65 in wages (reflecting the number of retirees who are expected to receive employer refunds) would have a significant impact on the year-to-year increase in average wages, resulting in a lower-than-expected increase in the contribution and benefit base and other program amounts.

Effective date.—The provision would apply with respect to refunds provided on or after January 1, 1989.

NOTE.—This provision was included in the House-passed budget reconciliation bill, H.R. 3299.

3. REPEAL OF CARRYOVER REDUCTION IN RETIREMENT AND DISABILITY BENEFITS DUE TO RECEIPT OF WIDOW'S OR WIDOWER'S BENEFITS BEFORE ATTAINING AGE 62

Present Law

If a widow(er) receives actuarially reduced benefits before age 62 and then applies for retirement or disability benefits, the new benefit is subject to a "carryover" reduction. This reduction reflects

the fact that social security benefits were already being paid at a reduced rate before the beneficiary filed for retirement or disability benefits. The widow(er) receives the retirement or disability benefit reduced by the carryover reduction, plus any additional widow(er)'s benefit necessary to bring the total benefit amount up to the level of the widow(er)'s benefit if it is larger than the retirement or disability benefit. Since the widow(er)'s benefit in most cases is larger than the retirement or disability benefit, the carryover reduction usually has no effect on the total benefit received.

Proposal

The widow(er)'s carryover reduction would be eliminated, i.e., the retirement or disability benefit received by a widow(er) would not be subject to carryover reduction.

Effective date—Applies to retirement benefits of individuals who attain age 62 on or after January 1, 1990. Applies to disabilty benefits of individuals who both attain age 62 and became disabled on or after January 1, 1990.

NOTE.—This provision was included in the House-passed budget reconciliation bill, H.R. 3299.

4. EXTENSION OF SOCIAL SECURITY COVERAGE EXEMPTION FOR MEMBERS OF CERTAIN RELIGIOUS FAITHS

Present Law

Self-employed workers may claim an exemption from social security coverage if (a) they are members of a religious sect or division that is conscientiously opposed to the acceptance of public or private insurance benefits, (b) they have waived all benefits under social security and medicare, (c) the sect or division has been in existence since December 31, 1950, and (d) the sect or division provides for the care of its dependent members. In addition, in cases where a self-employed individual has employees and both employer and employee meet the conditions described above, the employee may claim an exemption from social security coverage. This optional exemption applies to both the employer and employee portions of the social security tax. However, individuals who are employed by a church (or church-controlled organization), but are treated as self-employed under a separate provision of law, may not claim the exemption from social security coverage.

Proposal

The religious exemption would be extended in two ways. First, it would be available to employees of partnerships in which each partner holds a religious exemption from social security coverage. Second, it would be available to workers in churches and church-controlled nonprofit organizations who are treated as self-employed because the employing church or organization had exercised its option not pay the employer portion of the social security tax.

Effective date.—The change in the exemption pertaining to partnership arrangements would be effective as if included in the Technical and Miscellaneous Revenue Act of 1988. The change in the exemption pertaining to employees of church organizations would be effective for tax years beginning on or after January 1, 1990.

NOTE.—This provision was included in the House-passed budget reconciliation bill, H.R. 3299.

5. INCLUSION OF EMPLOYER COST OF GROUP-TERM LIFE INSURANCE IN COMPENSATION UNDER THE RAILROAD RETIREMENT TAX ACT

Present Law

Some forms of employee compensation are treated differently under the Railroad Retirement Tax Act (RRTA), which applies to the railroad retirement program, and the Federal Insurance Contributions Act (FICA), which applies to social security. Under FICA, employer-paid premiums for life insurance are generally not considered wages, and therefore, are not subject to the social security payroll tax. An exception is made for the value of employer-paid premiums for group-term life insurance coverage in excess of $50,000, which is included in the definition of wages and thus is subject to social security payroll taxes.

RRTA does not refer to life insurance. However, IRS regulations relating to RRTA exclude employer-paid life insurance premiums from the definition of taxable employee compensation.

Proposal

The value of employer-paid premiums for gorup-term life insurance coverage in excess of $50,000 would be included in the definition of compensation under RRTA and would therefore be subject to railroad retirement payroll taxes. Also, the provision would amend the RRTA to exclude generally the value of employer-paid life insurance premiums from the definition of compensation. These changes would bring into conformity the treatment of life insurance premiums under the social security and railroad retirement programs.

Effective date.—The provision would be effective with respect to coverage in effect after December 31, 1989, except in the case of former employees who separated from employment on or before December 31, 1989. Due to confusion about the taxable status of this remuneration, some employers may have withheld and paid payroll taxes on remuneration paid before January 1, 1990. Because these amounts would already have been credited for benefit purposes, and because it is likely that some employees would already have begun receiving benefits based on the crediting of such amounts, no refund of taxes paid or remuneration paid before January 1, 1990, would be made.

NOTE.—This provision was included in the House-passed budget reconciliation bill, H.R. 3299.

6. INCLUSION OF DEFERRED COMPENSATION ARRANGEMENTS, INCLUDING 401(K) PLANS, IN COMPENSATION UNDER THE RAILROAD RETIREMENT TAX ACT

Present Law

Under the Federal Insurance Contributions Act (FICA), employer-sponsored tax-qualified pension plans are generally excluded from the definition of wages and therefore are not subject to the

social security payroll tax. There are two exceptions, both relating to deferred compensation, to this general exclusion.

The first exception is for qualified cash or deferred arrangements (described in section 401(k) of the Internal Revenue Code). Under a cash or deferred arrangement forming a part of a qualified profit-sharing or stock bonus plan, a covered employee may elect either to have the employer contribute an amount to the plan on the employee's behalf or to receive such amount directly in cash. Amounts contributed to the plan are targeted as employer contributions, are includible in wages, and are subject to the FICA tax.

The second exception is for deferred compensation plans other than those specifically provided for in the general exclusion for tax-qualified pension plans. They are referred to as "nonqualified deferred compensation plans." Amounts contributed to these types of plans are includible as wages and are taxable under FICA.

The Railroad Retirement Tax Act (RRTA) does not refer either to pensions or to deferred compensation arrangements in its definition of compensation subject to payroll taxation.

Proposal

The RRTA would be amended to bring the treatment of deferred compensation arrangement, and pensions generally, into conformity with their treatment under FICA. Thus, employer-sponsored tax-qualified plans generally would be specifically excluded from the definition of compensation under RRTA and would therefore not be subject to railroad retirement payroll taxes. However, contributions to qualified 401(k) cash or deferred arrangements and contributions to nonqualified deferred compensation plans would both be included in compensation (and would therefore be subject to railroad retirement payroll taxes) to the same extent they are now included in wages for FICA tax purposes.

Effective date.—With respect to pensions generally, the provision would be effective for remuneration paid after December 31, 1989. With respect to deferred compensation arrangements, the provision would be effective for remuneration paid after December 31, 1989, (including remuneration paid after December 31, 1989, which is for services performed before January 1, 1990) with the following tax exceptions: (1) with respect to qualified 401(k) cash deferred arrangements, a transition rule is provided to exclude certain remuneration paid after December 31, 1989, if paid pursuant to certain elective deferrals made before January 1, 1990; and (2) in the case of certain agreements in existence on June 15, 1989, between a non-qualified deferred compensation plan and an individual, the provision would only apply to services performed after December 31, 1989. Due to confusion about the taxable status of this remuneration, some employers may have withheld and paid payroll taxes on remuneration paid before January 1, 1990. Because these amounts would already have been credited for benefit purposes, and because it is likely that some employees would already have begun receiving benefits based on the crediting of such amounts, no refund of taxes paid on remuneration paid before January 1, 1990, would be made.

NOTE.—This provision was included in the House-passed budget reconciliation bill, H.R. 3299.

7. CODIFICATION OF ROWAN WITH RESPECT TO RAILROAD RETIREMENT

Present Law

In a 1981 case, *Rowan Companies, Inc.* v. *United States,* the Supreme Court ruled that the definition of "wages" for Federal Insurance Contributions Act (FICA) purposes must be interpreted in regulations in the same manner as for income-tax withholding purposes. At issue in the case was the treatment of meals and lodging provided for the convenience of the employer. The Social Security Act Amendments of 1983 codified Rowan with respect to meals and lodging, but in all other cases stated that nothing in the regulations prescribed for the purposes of income tax withholding which provides an exclusion from "wages" shall be construed to require a similar exclusion from "wages" in the regulations prescribed for the purposes of FICA. Similar language was not included in the Railroad Retirement Tax Act (RRTA).

Proposal

The provision would amend the RRTA to state that, except in the case of meals and lodging provided for the convenience of the employer and excludible for purposes of income tax withholding, nothing in the regulations prescribed for purposes of income tax withholding which provides an exclusion from "wages" shall be construed to require a similar exclusion from "compensation" in the regulations prescribed for purpose of the RRTA.

Effective date.—The provision would be effective for remuneration paid after 1989.

NOTE.—This provision was included in the House-passed budget reconcilation bill, H.R. 3299.

NONCONTROVERSIAL PROVISIONS

1. IMPROVEMENTS IN SOCIAL SECURITY SERVICES

Present Law

a. Standards applicable in certain determinations of good cause, fault, and good faith

Good cause.—A Social Security beneficiary who (i) works for more than 45 hours during a month in noncovered employment outside the U.S., (ii) ceases to have a child in care, or (iii) has earnings in excess of the annual exempt amount under the retirement test, is subject to a penalty for failure to report these facts to SSA. However, if the individual can demonstrate to the satisfaction of the Secretary that he or she had good cause for failing to make a timely report, the penalty is waived. In addition, disability benefits are terminated when a beneficiary fails, without good cause, to cooperate with the Secretary in reviewing his or her entitlement or in following a treatment which is expected to restore his or her ability to work.

Fault.—Overpayments to beneficiaries are waived in cases where the individual is without fault and recovery would defeat the purposes of the program or would be against "equity and good conscience." SSA regulations state that in determining whether an individual is without fault, consideration will be given to the individ-

ual's age, intelligence, education, and physical and mental capabilities.

Good faith.—A beneficiary receiving benefits based on disability whom the Secretary determines is no longer disabled has the option of having his or her benefits continued through a hearing before an Administrative Law Judge (ALJ). Benefits paid during this period are considered overpayments if the beneficiary loses the appeal. However, if the beneficiary acted in good faith in pursuing the appeal, repayment can be waived. SSA regulations establish a presumption that appeals are made in good faith unless the beneficiary fails to cooperate with the agency during the appeal.

b. Notice requirements.

Blind SSI applicants and recipients may opt to be informed by telephone of a decision or action affecting them within 5 days of the mailing of written notices of such action, to have such notices sent by certified mail, or to receive them through some other means established by the Secretary. These options are not available to blind social security applicants and recipients.

c. Representation of claimants

Social security claimants and beneficiaries may use attorneys and legal assistance representatives in pursuit of their claims and in taking other action before the agency. The Secretary is not required to advise claimants or beneficiaries of options regarding their possible use of attorneys and legal aid representatives. When a claimant or a beneficiary decides to use one, SSA requires the individual to formally designate the representative. SSA is under no legal requirement to maintain an automated list of attorneys and legal aid representatives who have this written authorization to assist claimants and beneficiaries with their cases before the agency.

d. Authority for Secretary to take into account misinformation provided to an applicant in determining date of application

By regulation, if an individual expresses his intention to file for Social Security or SSI benefits in a telephone call to SSA, the SSA representative is required to establish a protective application at the time of the call. These procedures enable an applicant to establish the date of the call as the filing date if the applicant subsequently qualifies for benefits. If the Individual does not express an intention to file for benefits, a protective filing date is not established, even if failure to express such interest is caused by misinformation communicated in the call by the SSA representative.

e. Same-day personal interviews at SSA field offices in cases where time is of the essence

Nothing in current law requires SSA offices to respond promptly to individuals who visit them on matters of personal urgency or under time deadlines imposed by the agency.

f. Authority to amend wage records after expiration of time limitation

The Secretary is required to establish and maintain records of workers' wages and self-employment income. Errors in these records can be corrected at any time up to 3 years, 3 months, and 15 days after the year in which the earnings occurred. After this time, various revisions can be made including ones in which an employer neglected to report covered wages. However, no revision is permitted where an employer misreported the amount of the earnings.

Proposal

a. Standards applicable in certain determinations of good cause, fault, and good faith

In making determinations of whether a title II beneficiary:

(i) is without fault in an overpayment,

(ii) has acted in good faith in appealing a termination of his disability benefits,

(iii) has good cause for having failed to make a timely report of overseas work, of earnings above the retirement test exempt amount, or of ceasing to have a child in care, or

(iv) has good cause for having failed to participate in a reassessment of his disability or in a program of treatment, the Secretary would be required to take into account any physical, mental, educational, or linguistic limitations that the individual has (including any lack of facility in the use of English).

Similar provisions apply with respect to SSI.

Effective date.—Applies to determinations made on or after July 1, 1990.

b. Notice requirements

The notification options currently available to blind SSI applicants and recipients would be extended to social security applicants and recipients.

In addition, the Secretary would be required to submit a report to the House Ways and Means and the Senate Finance Committees on current procedures for providing social security and SSI notices in foreign languages and options for making greater use of them with individuals having limited English-speaking capacity.

Effective date.—The first provision applies to notices issued on or after July 1, 1990.

The required report on foreign language notices would be due January 1, 1991.

c. Representation of claimants

The Secretary would be required to maintain an up-to-date electronic record, accessible to SSA offices through the agency's computer system, of the identities of legal representatives of all social security claimants. In addition, the Secretary would be required to include in benefit denial notices information on options for obtaining legal representation before the agency. Such notices also would include information about the availability of legal service organizations that provide assistance free-of-charge to qualified claimants.

Effective date.—The provision requiring an electronically retrievable list of legal representatives would be effective June 1, 1991; the provision requiring denial notices to contain options for legal representation would be effective on or after January 1, 1991.

d. Authority for Secretary to take into account misinformation provided to an applicant in determining date of application

When an individual can demonstrate to the Secretary's satisfaction that he or she failed to file for social security or SSI benefits as a result of misinformation concerning eligibility provided by SSA, the individual would be deemed to have applied on the later of (i) the date the incorrect information was provided, or (ii) the date the individual met all the requirements for entitlement.

Effective date.—Applies with respect to social security benefits for months after December 31, 1982. With respect to SSI benefits, the provision applies for months after the month of enactment.

e. Same-day personal interviews at SSA field offices in cases where time is of the essence

When an individual visits a field office during normal business hours in response to a time-limited notice for action sent by SSA or because his or her social security or SSI check was lost, stolen, or not received, the Secretary would be required to assure that the individual receives a face-to-face interview with an SSA employee before the close of the business day. Nothing in this section is intended to diminish what the Committee regards as SSA's continuing responsibility to provide same day interviews to other individuals who visit the office.

Effective date.—Applies to visits to SSA field offices on or after January 1, 1990.

f. Authority to amend wage records after expiration of time limitation

The current list of revisions to earnings records that can be made after 3 years, 3 months, and 15 days from the year of the earnings would be expanded to permit adding wages to a record where an entry for an employer is present but incorrect.

Effective date.—The provision would be effective upon enactment.

NOTE.—These provisions were included in the House-passed budget reconciliation bill, H.R. 3299, and the reconciliation provisions approved by the Senate Finance Committee.

2. ELIMINATION OF DEPENDENCY TEST APPLICABLE TO CERTAIN ADOPTED CHILDREN

Present Law

A child adopted before a worker becomes entitled to retirement or disability benefits is eligible for child's insurance benefits. A child (other than the worker's stepchild) adopted after a worker's entitlement is ineligible for social security benefits unless he or she was living with the worker, and dependent upon the worker for at

least one-half of his or her support, for the year prior to the worker's entitlement.

Proposal

A minor child adopted after a worker becomes entitled to retirement or disability benefits would be eligible for child's benefits regardless of whether he or she was living with the dependent upon the worker prior to the worker's entitlement.

Effective date.—Applies with respect to benefits payable for months after December 1989, but only on the basis of applications filed on or after January 1, 1990.

NOTE.—This provision was included in the House-passed budget reconciliation bill, H.R. 3299 and reconciliation provisions approved by the Senate Finance Committee.

3. EARNINGS AND BENEFITS STATEMENTS

Present Law

There is no statutory requirement that the Social Security Administration provide individuals with earnings and benefit statements. Upon request, SSA currently will provide an individual with such information.

Proposal

Beginning not later than October 1, 1990, the Secretary would be required to provide individuals, age 25 and older, who have a social security number and have wages or net self-employment income, with a social security account statement upon the request of the individual. These statements would show (1) what their earnings have been, (2) an estimate of what they have contributed to the social security program (including a separate estimate for HI), and (3) an estimate of their future benefits at retirement (including those of auxiliaries) and a description of medicare benefits. Starting in 1995, these statements would be automatically provided to all such individuals who have attained age 60 (but are not yet receiving benefits) and for whom the Secretary can determine a current address. Each statement sent to an eligible individual would include a notice stating that these statements are updated annually and are available upon request. Starting in 1999, these statements would be automatically provided on a biennial basis to those under age 60 as well (benefit estimates would not be required in the case of persons under age 50, although a general description of benefits would be required).

Effective date.—As described previously, the provision would be phased in gradually between October 1, 1990 and October 1, 1999.

NOTE.—This proposal was included in the Senate Finance Committee reconciliation provisions.

HUMAN RESOURCE AND INCOME SECURITY PROVISIONS

1. INCREASE IN CHILD WELFARE AUTHORIZATION

Present Law

Title IV–B of the Social Security Act authorizes the appropriation of Federal funds for child welfare services. These funds may be

used for preventing or remedying neglect and abuse, preventing the separation of children from their families, reunifying families, placing children for adoption, and assuring adequate care for children in out-of-home placements. The authorization level for the Title IV-B child welfare services program is $266 million per fiscal year.

Under the title IV-B program, if total Federal appropriatrions exceed $141 million in any fiscal year, a State may receive its portion of the funds in excess of $141 million only if it has met the requirements for forster care protections outlined in section 427(a). In addition, if appropriations equal or exceed $266 million for 2 consecutive years, a State may receive its share of the appropriations in excess of the 1979 funding level ($56.5 million) only if it has met the requirements for foster care protections outlined in section 427(b).

Proposal

Increases the authorization level of the child welfare services program from $266 million to $325 million a year.

Increases from $266 million to $325 million the title IV-B funding level at which, if equaled or exceeded for two consecutive years, a State must meet the requirements of section 427(b) in order to: (1) receive its share of the Federal appropriation in excess of the 1979 funding level, and (2) transfer funds from the title IV-E to the Title IV-B program.

Effective date.—October 1, 1989.

NOTE.—This provision was included in the House-passed reconciliation bill, H.R. 3299 and S. 1750.

2. REVIEW OF STATE COMPLIANCE WITH CHILD WELFARE REQUIREMENTS

Present Law

Public Law 96-272, the Adoption Assistance and Child Welfare Amendment of 1980, provided financial incentives to States to implement and operate a set of services and States to implement and operate a set of services and procedures designed to prevent the unnecessary removal of children from their home, prevent extended stays in foster care and ensure that efforts are made to reunify children with their families or place them for adoption. The services and procedures are outlined in section 427 of the Social Security Act.

In fiscal year 1981, HHS requested that States "self-certify" their compliance with the section 427 protections "on the basis of their understanding of the statutory requirements and an analysis of the related State child welfare programs, systems and policies implemented and in operation during the year for which they certified (HHS section 427 Review Handbook, August 1988, p. 1)." States which self-certified were to be reviewed later by the Department to ensure that they had actually implemented the section 427 protections.

According to the HHS section 427 Review Handbook, to verify compliance, with section 427 requirements, HHS conducts a two-stage review, including an administrative review and a case record survey. Under the case record survey, an initial review is conduct-

ed for the fiscal year in which the State first certifies its eligibility. If a State meets the initial review, a subsequent review is conducted for the following year. States that meet the requirements of this subsequent review will be reviewed for the third fiscal year following the year for which the subsequent review was conducted. This is known as the triennial review. The case record survey must confirm the section 427 protections are provided for at least 66% of the children in the initial review, 80% of the children in the subsequent review, and 90% of the children in the triennial review.

Final regulations implementing section 427 became effective on June 22, 1983.

Proposal

The Secretary of HHS could not, before October 1, 1990, reduce any payment to, seek any repayment from or withhold any payment from any State under Title IV-B or IV-E of the Social Security Act, as a result of a disallowance determination made in connection with a triennial review of State compliance with the foster care protections outlined in section 427 of the Social Security Act for any Federal fiscal year preceding fiscal year 1991.

Effective date.—On enactment.

NOTE.—This provision was included in the House-passed reconciliation bill, H.R. 3299.

3. EXTENSION OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS

Present Law

Mandatory State-by-State ceilings are placed on foster care funds if the Federal appropriations for child welfare services reaches a specified trigger level, currently $266 million. In the absence of a mandatory foster care ceiling, States may elect to operate under a voluntary ceiling. A State may use one of several methods to calculate the most favorable ceiling.

Under a voluntary ceiling, a State may transfer a portion of its unused foster care funds. However, the amount transferred, together with the State's IV-B allocation, may not exceed what the State would have received if the child welfare services appropriation had triggered the ceiling (i.e., currently $266 million).

The foster care ceilings and the authority to transfer foster care funds to child welfare services expired Steptember 30, 1989.

Proposal

Extends the foster care ceiling and the authority to transfer foster care funds to child welfare services for three years, through September 30, 1992.

Permanently increases the Title IV-B child welfare services appropriations level at which a mandatory foster care ceiling is triggered from $266 to $325 million.

Effective date-—October 12, 1989.

NOTE.—A similar provision was included in the House-passed budget reconciliation bill, H.R. 3299 and S. 1750.

4. FAMILY SUPPORT ACT

Present Law

No provision.

Proposal

The Office of Legislative Counsel has identified several technical errors (i.e., incorrect cross references and citations as well as text that was inadvertently dropped) in the Family Support Act of 1988. Legislation to correct these technical errors is included.

NOTE.—These provisions were included in the House-passed budget reconciliation bill, H.R. 3299.

5. INTERGENERATIONAL DEMONSTRATION PROJECT FOR DISABLED CHILDREN

Present Law

No provision.

Proposal

Authorizes the Secretary of Health and Human Services to conduct demonstration projects in 10 communities. The demonstrations would test the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children. The demonstration would determine the contribution of such voluntary assistance to the reduction of the costs of care for these children.

Effective date.—October 1, 1989.

NOTE.—This provision was included in the House-passed budget reconciliation bill, H.R. 3299.

6. EXCLUSION OF AGENT ORANGE SETTLEMENTS IN DETERMINING ELIGIBILITY FOR NEEDS-TESTED PROGRAM

Present Law

Under SSI and other needs-tested programs, all forms of income generally count against eligibility for benefits unless there is a statutory provision under which the income can be disregarded. Individuals who are awarded benefits under the Agent Orange litigation could, therefore, find that the Agent Orange awards result in their losing eligibility under SSI or other programs.

Proposal

Excludes Agent Orange settlement payments from income and resources under SSI, AFDC, Medicaid, title XX social services, and several other programs.

Effective date.—January 1, 1989.

NOTE.—This provision was included in S. 1750.

MEDICARE AND HEALTH PROVISIONS

Present Law

The Medicare program is authorize by Title XVIII of the Social Security Act. The Medicare program pays for health services for 34 million aged and disabled beneficiaries.

Medicare directly pays hospitals, physicians and a wide variety of other health providers. Payments to providers in FY 90 will total over $100 b.

In view of the size and complexity of the Medicare program, minor and technical amendments to Title XVIII have been adopted in recent years. The Omnibus Budget Reconciliation Act of 1987 included a number of such amendments.

Proposal

A number of minor and technical amendments would be made to the statutory authority for Medicare and other health programs as follows:

Part A

A. Pass-Through Payment for Hemophilia Inpatients.—Provides a PPS pass-through payment for the costs of administering blood clotting factors to individuals with hemophilia.

2. Medicare Buy-In for Continued Benefits for Disabled Individuals.—Provides an option for disabled individuals who have entitlements solely on the basis of excess earnings to purchase Medicare coverage.

3. Buy-In Under Part A for Qualified Medicare Beneficiaries.—Provides that the Secretary shall at the request of a State made after 1989, modify the buy-in agreement with the State to provide for State payment of Part A premiums for QMBs.

4. ProPAC Study on Medicare Dependent Hospitals.—Requires a ProPAC study of the appropriateness of making an adjustment to the methodology for determining PPS payments for hospitals with a high proportion of Medicare discharges.

5. Provisions Relating to Target Amount Adjustments.—Provides for modifications in target amount adjustments.

6. Study of Methods To Compensate Hospice for High Cost Care.—Requires the Secretary to study high cost hospice care under Medicare.

7. Prohibition on Nursing Home Balance Billing.— Prohibits balance billing by nursing homes to Medicare patients.

8. Hospital Anti-Dumping Provisions.—Modifies hospital anti-dumping provisions.

9. Release and Use of Hospital Accreditation Surveys.—Requires all institutions and JCAHO to release surveys to the Secretary and authorizes the Secretary to release certain information.

10. Intermediate Sanctions for Psychiatric Hospitals.—Provides intermediate sanctions for psychiatric hospitals which fail to meet the requirements for a psychiatric hospital.

11. Eligibility of Merged or Consolidated Hospitals for Periodic Interim Payments.—Established eligibility criteria for merged or consolidated hospitals for periodic interim payments.

12. Extension of Waiver for Finger Lakes Area Hospital Corporation.—Extends the waiver.

13. Clarification of Continuation of August 1987 Hospital Bad Debt Recognition Policy.—Clarifies further a provision of OBRA 1987 regarding hospital bad debt recognition policy.

14. Use of More Recent Data Regarding Routine Service Costs of Skilled Nursing Facilities.—Requires use of more recent data regarding routine service costs of SNFs.

15. Permitting Dentist to Service as a Hospital Medical Director.—Permits a dentist to serve as hospital medical director.

16. GAO Study of Hospital-Based and Free-Standing Skilled Nursing Facilities.—Requires a GAO study of the differences in costs between hospital-based and free-standing SNFs.

17. Massachusetts Medicare Repayment.—Provides that no recoupment or reduction may be made in payments to Massachusetts hospitals on account of alleged overpayments prior to May 1, 1990.

18. Allowing Certifications and Recertifications by Nurse Practitioners and Clinical Nurse Specialists for Certain Services.—Allows certifications and recertifications of SNF services by nurse practitioners and clinical nurse specialists.

19. Prohibition of DRG reweighting.—Prohibits Secretary of HHS from adjusting DRG weighting factor on other than a budget neutral basis effective in FY 91.

20. Essential Access Community Hospital Program.—Authorizes grants to hospitals and to States for the purpose of developing rural health networks.

21. Geographic Reclassification Board.—Provides for a board to review and modify the geographic status of hospitals.

22. Report on Single National Rate.—Requires the Secretary to study and report on a single national hospital payment rate.

23. ProPAC Study.—Study by Prospective Payment Assessment Commission of the payment of rural hospitals.

Part B

1. Modification of Payment for Therapeutic Shoes for Individuals with Severe Diabetic Foot Disease.—Expands the benefit provided in the demonstration for individuals with severe diabetic foot disease.

2. Extension and Expansion of CRNA Passthrough.—Raises the number of inpatient and outpatient surgical procedures that may be performed in rural hospitals qualifying for the cost-based reimbursement exemption from the prospective payment system.

3. Physical and Occupational Therapy.—Increases the limit on recognized expenses for physical and occupational therapy services from $500 to $750 a year.

4. Study of Payment for Portable X-Ray Services.—Requires the Secretary to conduct a study of the costs of furnishing and payments for portable X-ray services under Medicare Part B. The report is due one year after enactment and is to include a recommendation on payment methods.

5. Permitting Substitution of Shoe Modifications for Inserts.—Permits individuals receiving benefits uder the demonstration to substitute modification of shoes instead of obtaining additional pairs of inserts.

6. Extension of Municipal Health Service Demonstration Projects.—Extends municipal health service demonstration projects through December 31, 1993 and requires the Secretary to submit a report on the waiver program.

7. Study of Reimbursement for Ambulance Services.—Requires the Secretary to study the adequacy and appropriateness of Medicare payments for ambulance services and to submit the report one year after enactment.

8. ProPAC Study of Payments for Services in Hospital Outpatient Departments.—Requires ProPAC to conduct a two-part study of factors related to rapid growth in Medicare payments for outpatient hospital department services.

9. PhysPRC Study of Payments for Assistants at Surgery.—Requires PhysPRC to study Medicare payments for assistants at surgery.

10. Study of Registered Nurse as Assistants at Surgery.—Requires the Secretary to conduct a study of the effects of OBRA '86 on the employment of registered nurses as assistants at surgery.

11. GAO Study of Standards for Use of and Payment for Items of Durable Medical Equipment.—Requires GAO to conduct a study of the appropriate uses of items of durable medical equipment and appropriate criteria for making determinations of medical necessity.

12. Acceleration of Use of Regional Rates and Narrowing of Range of Amounts Recognized for DME.—Accelerates the transition to payments based solely on regional prices for items of durable medical equipment.

13. Physician Office Labs.—Repeals the requirement that high volume physician labs comply with the same State and Federal requirements as independent laboratories.

14. Study of Reimbursement for Blood Clotting Factor for Hemophilia Patients.—Requires the Secretary to review the current methodology for Medicare reimbursement of blood clotting factor for hemophilia patients.

15. Extension of MAAC limits.—Extends MAAC limits to January 1, 1992.

Parts A and B and other

1. Medicare Hospital Patient Protection Amendments.—Modifies current requirements pertaining to hospital obligations with respect to treatment of emergency medical conditions and indigent care.

2. Health Maintenance Organizations and Competitive Medical Plans.—Extends the temporary waiver for Watts Health Foundation; limits charges for emergency services and out-of-area coverage; and makes authority for the benefits stabilization fund permanent.

3. Rural Health Clinic (RHC) Services.—Modifies staffing requirements to include nurse-midwife services; adds services provided by clinical social workers to the list of services covered in RHCs; expands areas eligible for RHC status; provides for dissemination of RHC information; and expands the functions of the Office of Rural Health.

4. Determining Eligibility of Home Health Agencies (HHAs) for Waiver of Liability for Denied Claims.—Clarifies criteria for determining eligibility of HHAs for waiver of liability.

5. Extension of Authority To Contract with Fiscal Intermediaries and Carriers on Other Than a Cost Basis.—Extends the current contracting authority.

6. Expansion of Rural Health Medical Education Demonstration Project.—Expands the scope of the project.

7. Inner-City Hospital Triage Demonstration Project.—Requires the Secretary to establish an inner-city triage demonstration project.

8. GAO Study of Administrative Costs of Medicare Project.—Requires GAO to study the administrative burden, including administrative costs, of the Medicare program on providers, intermediaries and carriers.

9. End Stage Renal Disease (ESRD) Program.—Provides for flexibility in funding ESRD network organizations, liability protection for such organizations, and a report ordination before notice to beneficiary.

10. Extension of COBRA Continuation Coverage.—Extends COBRA continuation coverage from 18 to 29 months for those with a disability at the time of termination of employment.

Effective dates.—These provisions would take effect upon enactment and other dates as appropriate.

III. BUDGET EFFECTS OF THE BILL

A. Committee Estimate

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made:

The Committee estimates of the cost of the bill appear below. These estimates are identical to preliminary estimates supplied by the Congressional Budget Office (CBO).

ESTIMATES OF BUDGETARY EFFECTS OF PROVISIONS IN THE MISCELLANEOUS AND TECHNICAL SOCIAL SECURITY ACT AMENDMENTS OF 1989

[Fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994	1990–94
I. SOCIAL SECURITY						
Time-Sensitive Provisions:						
Continuation of disability benefits during appeal	8	27	6	9	10	60
General fund transfer to Railroad Retirement Trust Fund	0	0	0	0	0	0
Disability demonstration authority	1	6	6	6	.....	19
Miscellaneous provisions:						
Prohibition against termination of coverage by foreign affiliates U.S. corporations	(1)	(1)	(1)	(1)	(1)	(1)
Treatment of catastrophic refunds Widow(er)'s carryover	0	0	0	0	0	0
Clarification of religious exemption from Social Security (revenue loss)	1	1	1	1	1	1
Railroad Retirement—3 Technicals (revenue gain)	−2	−2	−2	−2	−2	−2
Social Security Administration services improvements—direct spending	(1)	(1)	1	2	3	7
(Authorization)	1	1	1	2	2	6
Adopted children	5	12	16	21	22	76
Earnings and benefit statements	(1)	(1)	(1)	(1)	(1)	(1)
Total—Social Security (net deficit effect)	13	44	28	38	36	157
II. HUMAN RESOURCES						
Time-sensitive provisions:						
Triennial reviews	(1)	(1)	(1)	(1)	(1)	(1)

ESTIMATES OF BUDGETARY EFFECTS OF PROVISIONS IN THE MISCELLANEOUS AND TECHNICAL SOCIAL SECURITY ACT AMENDMENTS OF 1989—Continued

[Fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994	1990–94
Transfer authority	4	5	5	1	0	15
Technical provisions:						
Technicals (Family Support Act)	0	0	0	0	0	0
Increase in child welfare (authorization)	43	58	59	59	58	278
Intergovernmental demonstration (authorization)	1	1	2	2	2	8
Agent orange	(1)	(1)	(1)	(1)	(1)	(1)
Total—Human Resources (direct spending)	4	5	5	1	0	15
III. HEALTH PROVISIONS						
Pass-through for hemophilia patients	4	32	36	0	0	72
Medicare buy-in for disabled	(1)	3	7	12	18	40
Buy-in under part A for qualified Medicare beneficiaries	(1)	(1)	(1)	(1)	(1)	(1)
Therapeutic shoes for severe diabetes	(1)	(1)	(1)	(1)	(1)	(1)
CRNA passthrough	(1)	(1)	(1)	(1)	(1)	(1)
Physical and occupational therapy	(1)	(1)	(1)	(1)	(1)	(1)
Other technicals	(1)	(1)	(1)	(1)	(1)	(1)
Total—Health	4	35	43	12	18	112
Grand total (net deficit reduction)	21	84	76	51	54	284

[1] Indicates less than $500,000.

B. Statement Regarding New Budget Authority and Tax Expenditures

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the Committee estimates indicate that there is a change in budget authority as a result of the bill. There are no increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office, the Committee reports that a CBO estimate was unavailable.

IV. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Vote of the Committee

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made: the bill, H.R. 3730, was ordered favorably reported on a voice vote on Sunday, November 19, 1989.

B. Oversight Findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the need for this legislation was confirmed by the oversight hearings of the Subcommittee on Human Resources, held with respect to child welfare,

foster care and adoption assistance on June 1, 1989; and by the oversight hearings of the Subcommittee on Social Security held regarding the quality of services provided by the Social Security Administration on September 28, 1988, and held with respect to the eligibility of children adopted by disabled workers after the onset of a disability, on April 6, 1989.

C. Oversight by the Committee on Government Operations

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings and recommendations have been submitted to this Committee by the Committee on Government Operations with respect to the provisions contained in this bill.

D. Inflationary Impact

In compliance with clause 2(l)(4)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions contained in this bill are not expected to have any inflationary impact on the economy.

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